

### REMARKS

Claims 1-26 are pending. Claims 1-11, 22 and 24 are cancelled by this amendment, without prejudice. Claims 27-31 are added. Applicants make these amendments in order to expedite prosecution of these claims. Support for these amendments appears throughout the specification and claims as originally filed. Claims 27-31 are further supported at page 12, lines 8-9 and at page 5, lines 21-26. No new matter is added by these amendments. Applicants make such amendments without prejudice to pursuing the originally presented or cancelled subject matter in a later application claiming benefit of this application, and particularly without prejudice to determination of equivalents of subject matter of this application or any later application claiming benefit of this application.

### Rejection Under 35 U.S.C. § 103(a)

Claims 1-16 are rejected as obvious in light of Mehansho et al. (US Patent 4,992,282), in view of Clark (U.S. Patent 5,376,396), and Calderas (U.S. Patent 5,431,940) and Pflaumer et al. (U.S. Patent 5,641,532). In the Action, it is alleged that Mehansho discloses a beverage containing sugar, pectin, water and flavors, juice concentrates and vitamins; that Clark discloses that pectin is a well known food stabilizer; that Calderas discloses that it is known to use sucrose and fructose together in a beverage combination; and that Pflaumer discloses that it is known to use pectin in a beverage with a flavor, stabilizer, preservatives and sucrose and fructose. It is then asserted that the discovery of an optimum value of a result effective variable is ordinarily within the skill of the art. In developing beverage products, properties such as sweetness, stability and viscosity are important. It appears that the precise ingredients as well as their proportions affect sweetness, stability and viscosity of the product, and thus are result effective variables, which one of ordinary skill in the art would routinely optimize. It is then concluded that on this basis it would have been obvious to use a particular ratio of sweeteners and pectin to make the claimed invention. While Applicants disagree, the rejection in regard to cancelled claims 1-11 is moot, and the rejection in regard to claims 12-26 is addressed below.

The pending claims relate to compositions having UTH extracts therein. None of Mehansho, Clark, Calderas or Pflaumer, either alone or in combination, would have provided one of ordinary skill any motivation to pursue Applicants' claimed subject matter, compositions having UTH extracts. It is impermissible to use hindsight in assessing the motivation to arrive at the instantly claimed subject matter. Absent Applicants' insights based on the novel and unobvious use of UTH extract and the associated formulation constraints imposed on non-artificially sweetened juice drinks, one of ordinary skill would not have been motivated to pursue, nor combine the aforementioned references in the manner forwarded in the Action.

Claims 11-26 are rejected as obvious in light of the above combined references, and further in view of Wallin (U.S. Patent 4,211,577), Stahl (U.S. Patent 4,775,477), Norris (U.S. Patent Publication 2002/001651 A1), and Yanko (Russian Patent Publication 2114168 C1). In the Action it is further alleged that Wallin discloses an extract from cranberries, Stahl discloses a cranberry extract which contains cranberry juice, acids, sugars, etc., Norris discloses using extracts from foods to alter the flavor and taste of a beverage, and Yanko discloses that it is known to flavor beverages with cranberry flavor from an extract. It is then concluded that in light of these teachings, it would have been obvious to use an UTH extract to flavor beverages. Applicants disagree with this analysis and submit that such a finding is conclusory and an overbroad application of these teachings to Applicants' claimed subject matter. None of Wallin, Stahl, Norris, or Yanko would have provided the motivation or suggestion to one of ordinary skill in the art for Applicants' UTH extract compositions.

Applicants' claimed compositions comprise UTH extract, whose composition, benefits and use are distinct from the composition, function and use of the extracts in each of the cited references. The cited references all relate to extracts for flavoring or coloring purposes. Applicants' UTH extract is not used for coloring or flavoring purposes. The extracts of the cited references and Applicants' UTH extract are thus different in form and function. In fact, the UTH extract used in the examples and referenced at page 12, line 8 and lines 10-11 is a dried extract powder that is virtually flavorless. It also provides virtually no color to the final composition. Color, if desired, must be introduced by use of another color agent. The use of UTH extract is particularly advantageous as the resulting beverage has the urinary tract health benefits of a higher calorie juice drink (e.g., cranberry juice cocktail) but reduced amounts of sweetener can

be used because typical levels of cranberry needed to achieve this urinary tract health benefit also impart a very astringent flavor that must be modified with higher amounts of sweetener.

Wallin teaches a process for producing color additives. In Example 5 of Wallin, a cranberry extract is produced, however, that extract is a solution analyzed and used for pigment in both non-food and food products (see, column 9, lines 18-24 of Wallin). The teaching of Wallin is separate and distinct from Applicants' UTH extract in both form and use. As such, Wallin, alone or in combination, would not have motivated one of ordinary skill to pursue Applicants' claimed subject matter, a beverage having beneficial levels of compounds for urinary tract health.

Stahl teaches a method of providing a red-colored solution from a cranberry presscake. Both the form (colored solution) and intended use of the solution as a colorant are separate and distinct from Applicants' UTH extract, which is used to provide high levels of beneficial compounds (e.g., proanthocyanidins) to provide urinary tract health benefits. Stahl relates to cranberry extracts for use in coloring, thus Stahl, alone or in combination, would not have motivated one of ordinary skill to pursue Applicants' claimed subject matter, a beverage having beneficial levels of compounds for urinary tract health.

Applicants submit that Norris is improperly cited as art for 103(a) purposes. Nonetheless, Norris relates to methods of modifying taste and/or flavor characteristics of edible consumables by incorporating polyphenols. Again, the motivation imparted by Norris relates to taste and flavor, which is separate and distinct from the UTH extract benefits sought in Applicants' claimed subject matter. Thus, one of ordinary skill would not have been motivated by Norris, alone or in combination, to pursue Applicants' reduced sugar, high UTH beneficial beverages.

Yanko discloses use of cranberry extract as a flavor enhancer. Again, like Stahl, Yanko relates to use of a cranberry extract as a flavor enhancer. As such, the extract in Yanko is used for flavoring, not urinary tract health benefits. The extract used for a flavoring would not have the levels of compounds (including proanthocyanidins) of an extract used to provide UTH nutrients, thus, Yanko, alone or in combination, would not have motivated one of ordinary skill to pursue Applicants' claimed subject matter.

Applicant : Hynes et al.  
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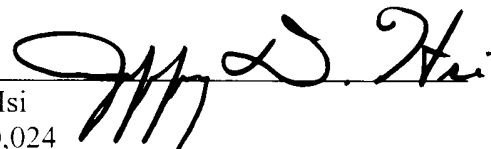
Applicants submit that one of ordinary skill would not be motivated by Wallin, Stahl, Norris, or Yanko, either alone, or in combination, to pursue Applicants' compositions having UTH extract. The extracts disclosed by Wallin, Stahl, Norris, and Yanko are of distinctly different form and for distinctly different purposes (flavoring or coloring) than Applicants' UTH extract (colorless and flavorless, but UTH benefit). Wallin, Stahl, Norris, or Yanko, either alone, or in combination, do not teach or suggest a food product having the urinary tract health benefit of Applicants' subject matter, nor do they teach or suggest a composition having the unique combination of sucrose, fructose, pectin, and UTH extract of Applicants' claimed subject matter. Based on the foregoing, Applicants respectfully request that this rejection be withdrawn.

Attached is a marked-up version of the changes being made by the current amendment.

Applicants ask that all claims be allowed. Enclosed is a check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050, referencing attorney docket number 004140-062001.

Respectfully submitted,

Date: December 18, 2002

  
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**Version with markings to show changes made**

In the claims:

Claims 1-11, 22 and 24 have been cancelled.

Claim 25 has been amended as follows:

- 25(Amended). The composition of any of claims 12[1]-16, wherein the composition has a
- brix value of less than about 12.